

REMARKS

Claims 63-90 have been amended. New Claims 91-144 have been added. Claims 63-144 are now in the application.

The Restriction Requirement

The examiner has made the restriction final ostensibly on the basis that the inventions have different classifications. It appears that the examiner's asserted different classifications is based on the preambles of the independent claims. In order to resolve this apparent misunderstanding regarding the scopes of the claims, all of the claims now have the same preamble, whereby Applicant submits that all the claims now claim the same invention. In addition, Applicant notes that the public record discloses that the examiner has already searched all of the alleged class/subclass combinations represented in the original Restriction Requirement. Accordingly, Applicant requests that the examiner reconsider the Restriction Requirement, rejoin all of the claims in the application, and examine all of the claims as a single claim set.

Claim Objections

Claim 77 stands objected to. The examiner asked which one of the bores applicant is referring to. Claim 77 has been amended to refer to a respective one of the bores. Applicant submits that Claim 77 is now clear and definite. Applicant respectfully requests withdrawal of the objection.

Rejection of Claims under 35 U.S.C. §102

Claims 63-69, and 71-84 stand rejected as being anticipated by US 2002/0151899 Bailey et al. Applicant respectfully traverses the rejection. Claim 63 recites said retainer band "being positioned within at least one of the bores, and being confined between the top side and the bottom side of said spinal plate".

By contrast, Bailey teaches that his second radially extending flange 72 is
"positioned slightly above an upper surface 84 of the plate member 12" Paragraph [0045].

Applicant submits that Claim 63, and all claims dependent therefrom, patentably distinguish over Bailey. Applicant respectfully requests withdrawal of the rejection.

Claims 63-67, 69-71, and 73-84 stand rejected as being anticipated by US 5,904,683 Pohndorf et al; and Claims 63-75 and 77-84 stand rejected as being anticipated by US 6,679,883 Hawkes et al. Applicant respectfully traverses both the rejection with respect to Pohndorf and the rejection with respect to Hawkes et al. Claim 63 recites

"a passage position wherein the head of said bone anchor...has deflected said retainer band transversely relative to the respective bore a sufficient distance to accommodate passage of said head of the respective said bone anchor past said retainer band".

By contrast, neither Pohndorf nor Hawkes teach or suggest any deflection or deflectability of their retainers in accommodating passage of any bone anchors.

Applicant submits that Claim 63, and all claims dependent therefrom, patentably distinguish over both Pohndorf and Hawkes et al. Applicant respectfully requests withdrawal of the rejections.

New independent Claim 109 teaches

"a first generally straight-line portion of the length of said retainer band extends across a first portion of the respective bore in a straight-line direction which is generally parallel to a portion of the top side of said plate".

No reference teaches such straight-line portion of the retainer band over the bore.

New independent Claim 122 teaches a retainer band having first and second ends facing away from each other. No reference teaches or suggests a retainer band having first and second ends facing away from each other. Pohndorf and Hawkes each have circular retainers, which are thus endless/devoid of ends. Bailey teaches a split-ring circular retainer band wherein the ends face each other.

Applicant submits that all bases of rejection and objection have thus been overcome, that no new matter has been added, and that the new claims are allowable over all prior art of record, whereby all of the claims as presented herein are allowable over all prior art of record. Allowance of all claims in the application is respectfully solicited.

Applicant has recently submitted two Information Disclosure Statements, one electronically, and another in paper form. The documents submitted in these two submissions represent a collection of documents of record in other related ones of Applicant's applications, as well as the documents of record in US2005/0192577, Serial Number 11/973,891, inventor Mosca et al, and US 2006/0161157, Serial Number 11/259,714, inventor Mosca et al. These submissions were made for the purpose of ensuring that Applicant has met his obligations with respect to all such documents, in anticipation of a potential interference between the instant application and the above Mosca et al applications.

A check in the amount of \$675. is enclosed herewith to pay the claims fee for the 46 additional claims, including 2 new independent claims. No other fee is believed to be due. Should any additional fee be properly due, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact the undersigned with any questions, comments or concerns, at the telephone number listed below.

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